

49<sup>00</sup> plDECLARATION OF COVENANTS AND RESTRICTIONS  
DRAINAGE AREA  
EASEMENT AREA

KNOW ALL MEN BY THESE PRESENTS:

WHEREAS, Timbercreek Ltd., a Florida Limited Partnership, hereinafter referred to as "Developer", being the owner of the land in the County of Orange and State of Florida, described as:

King's Bay, according to the Plat thereof recorded in Plat Book 15, Page 112 of the Public Records of Orange County, Florida.

Timbercreek Unit I, as recorded in Plat Book 10, Page 82, Public Records of Orange County, Florida.

WHEREAS, the said Developer desires that all of said property above described be subject to like restrictions for the mutual benefit and protection of itself and persons, both natural and corporate, who hereafter may purchase or acquire said property or any part thereof, or any interest in said property or any part thereof.

NOW THEREFORE, in consideration of the premises, the Developer declares that all of the property described above shall be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, easements, charges and liens (sometimes referred to as covenants and restrictions) which shall run with the real property and be binding on all parties having any right, title or interest in the described property or any part thereof, their heirs, successors and assigns and shall inure to the benefit of each such owner thereof.

I. DEFINITIONS.

1. "Property" shall mean and refer to all that real property heretofore described.

2. "Lot" shall mean and refer to any plot of land shown upon the recorded subdivision plat of the Property. The word Lot shall also include the living unit located thereon where the house has been constructed on the Lot.

3. "Living Unit" shall mean and refer to any portion of a building or single family structure situated upon the Property designed and intended for use and occupancy as a residence by a single family.

4. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Lot situated upon the Property, but, notwithstanding, any applicable theory of mortgage law, shall not mean or refer to the Mortgagee, unless and until such Mortgagee has acquired title pursuant to a foreclosure or any proceeding in lieu of foreclosure. The term Owner shall not mean or refer to any builder or developer who in its normal course of business purchases any lot for the purpose of constructing a living unit thereon for resale, but shall mean or refer to those persons who purchase a lot and improvements thereon during or after the completion of construction.

5. "Developer" shall mean and refer to Timbercreek, Ltd., a Florida Limited Partnership, its predecessor in title where applicable, or if the context requires, an officer of the Developer, specifically designated by the Developer to carry out the responsibilities of the Developer and assume the authority of the Developer or any Successor to Developer, being so designated by Developer. A successor Developer shall have all the rights of the Developer if specifically permitted by the Developer. Developer shall have the right to terminate its obligations under this paragraph by appointing a person or entity to continue

Chelan Fittle

TIMBERCREEK LTD.  
826 NORTH IRMA AVE.  
ORLANDO FL. 32803

Return To:

the architectural control set forth herein. Such appointment shall be by amendment of this document in the public records reflecting the name and address of such appointee who shall maintain such authority until a further amendment appointing the Association. Notwithstanding anything contained herein to the contrary each such amendment may be filed without approval of the Association or its members and shall be signed by the Developer or appointee.

## II. LAND AND BUILDING RESTRICTIONS.

1. Property Maintenance. The Owner of any Property, whether such Property be improved or unimproved, shall keep such Property free of tall grass, undergrowth, dead trees, dead tree limbs, weeds, trash and rubbish and shall keep such Property at all times in a neat and attractive condition.

Each Owner whose parcels adjoins or abuts any portion of any Lake, shown on the Plat shall keep his parcel and the portion of the adjoining and abutting dedicated tract between his parcel and the waters edge grassed, trimmed and cut and properly maintained, so as to present a pleasing appearance to maintain the proper contour of the banks of the Lake and to prevent erosion, except with the prior written approval of the Developer and/or the organization, however, the shoreline contour of the Lake shall not be changed and no parcel may be increased in size by filling in any Lake and no parcel may be dug out or dredged so as to cause the water of the Lake to protrude into the parcel.

2. The Developer, for itself, its successors and assigns, herewith reserves and is given a perpetual, alienable and releasable easement, privilege and right on, over and under the ground to erect, maintain and use, electric and telephone poles, wires, cables, conduits, water mains, drainage lines or drainage ditches, sewers and other suitable equipment for drainage and sewage disposal purposes. All for the installation, maintenance transmission and use of electricity, telephone, gas, lighting, heating, water, drainage, sewerage and other conveniences or utilities on, in, over and under all of the easements as the same appear on all plats recorded within the Property, whether or not such easements are shown on said plats to be for such purposes and on, in, over and under the easement strips shown on the Plat. The Developer, for itself, its successors and assigns, hereby reserves and is given a perpetual, alienable and releasable easement, privilege and right to use for the purpose of access to the Lake, within the Property, all easements reserved herein or as shown on all recorded Plats. The Developer shall have the unrestricted and sole right and power of alienating and releasing the privileges, easements referred to in this paragraph and an Owner subject to said privileges, rights and easements referred to herein, shall acquire no right, title or interest in or to the poles, wires, cables, conduits, pipes, mains, lines or other equipment or facilities placed on, over or under the Property which is subject to said privileges, rights and easements. All such easements including those designated on the said recorded plats are, and shall remain private easements, and the sole and exclusive property of the Developer, its successors and assigns. Developer or its successors shall have the right to access Lots for construction purposes over Lots previously sold.

3. Architectural Control. No building or other structure shall be erected, placed or altered on the Property until the building plans, specifications and plot plan have been submitted to the Developer, (two sets of each) and the same approved by it in writing in the following particulars: (i) that said building or other structure complies in all respects with these restrictions, reservations and conditions; and (ii) that said building or other structure is in conformity and harmony not only with respect to the topography and finish grade elevations, but also with the architectural design of completed or proposed other structures in said subdivision. In the event the Developer fails to approve or disapprove such design and location within thirty

(30) days after the same have been submitted to the Developer, such approval will not be required and this covenant will be deemed to have been fully complied with. The powers and duties of the Developer as set forth in this paragraph shall cease on the sale of the last Lot unless terminated sooner as provided herein.

4. Replats and Annexation.

A. The Developer reserves the right to subdivide, plat, resubdivide or replat any lot, lots or parcels referred to herein or shown on the recorded plat within the Property, by Deed or otherwise; however, none of the platted lots or said parcels shall be subdivided, platted or resubdivided or replatted by others, except with the prior written approval of the Developer. In the event any of the said Lots or parcels shall be subdivided, platted or resubdivided or replatted as aforesaid, the Covenants, Agreements, Restrictions, Easements and Reservations herein set forth shall thereafter spread to, bind and apply to the subdivided, platted, resubdivided or replatted lots or parcels.

B. Notwithstanding anything contained herein to the contrary, the Developer, its successors or assigns, shall have the absolute right to amend this Declaration to allow additional property owned by the Developer, its successors or assigns, to be made subject to this Declaration with the Owners becoming members of the Association. Such annexation shall not require the approval of the Association or members, but shall require an amendment to this Declaration signed by the Developer, its successors or assigns, and the legal description of said property. The Developer presently owns the property described on Exhibit A, which it presently intends, but shall not be obligated to make a part of the Association.

5. Construction. When the construction of any building has once begun, work thereon shall be prosecuted diligently and continuously until the full completion thereof, unless such completion is rendered impossible as a direct result of strikes, fires, national emergencies or national calamities.

6. Residential Use. All of the Lots, and all Lots enlarged or recreated by the shifting of the location of said Property lines are restricted to the use of a single family, their household, servants and guests.

7. No Trade, Business, Profession, Etc. No trade, business, profession or any other type of commercial activity shall be conducted on any of said Lots provided, however, this shall not prohibit the Developer or Developer's successors or assigns from being permitted to operate a real estate sales office for the sale of Lots and Living Units in or on the Property.

8. Temporary Structures. No temporary buildings, trailers or other structures for living or for any other purpose shall be permitted on any Lot except those owned by the Developer for construction or sale purposes.

9. Size of Living Unit. Each Living Unit shall be located on not less than one platted lot and any such Living Unit shall have a minimum of 900 square feet of air conditioned space, exclusive of garage and porches. Any exceptions to this square footage requirement must be approved by the Developer, in writing.

10. Setbacks. Setbacks shall meet the requirements of Orange County, Florida and the City of Winter Garden. The Developer reserves the right to approve modifications to the setback requirements if permissible, in the event Developer in its sole discretion believes that the plans which have been submitted make it advisable to permit a waiver of the setback requirements.

11. Construction Type. In the event concrete block construction is used, the concrete block shall be stuccoed.

12. Roof. The minimum acceptable pitch of the roof shall be 5/12.

13. Direction. All living units shall face the street.

14. Garages and Carports. No carport shall be permitted on any Lot. All garages must have a minimum width of eight foot and a minimum depth of sixteen feet and each living unit shall have at least a one car garage.

15. Vehicles and Repair. The parking of commercial vehicles, which description shall include, but not be limited to trucks, tractors, semi-trailers and commercial trailers, at any time on driveways or otherwise on the Property or on the public streets within the Property, is prohibited unless for loading or unloading purposes or when parked entirely within the garage permitted to be built under the provisions of these restrictions. Boats, motor homes, travel trailers and similar recreational vehicles are not to be visible from the Street. There shall be no repair of vehicles on the Property or public street except for emergency repairs.

16. All driveways shall be constructed of concrete or asphalt unless otherwise approved by Developer.

17. Recreational facilities. All basketball and similar recreational facilities shall be placed to the rear of the Lot.

18. Annoyances. No illegal, obnoxious or offensive activity shall be permitted or carried on upon any part of the Property, nor shall anything be permitted or be done thereon, which is or may become a nuisance or a source of embarrassment, discomfort or annoyance to the neighborhood. No trash, garbage, or rubbish, debris, waste, material or other refuse shall be deposited or allowed to accumulate or remain on any other part of the Property or lands contiguous thereto.

19. Animals. No cows, cattle, hogs, poultry or other livestock shall be raised or kept on the Property.

20. Swimming Pools. No above ground swimming pools shall be placed or permitted to remain on the Property or any part thereof unless otherwise approved by Developer.

21. Signs. Except as otherwise permitted herein, no sign of any character shall be displayed or placed upon the Property except "For Rent" or "For Sale" signs, which signs may refer only to the particular premise on which displayed. This sign shall not exceed three square feet in size, shall not extend more than four feet above the ground and shall be limited to one sign to a Lot. The Developer may enter upon any of the Property and summarily remove or destroy any signs which do not meet the provisions of this paragraph. The provisions of this paragraph shall not apply to the Developer and further, the Developer, may, in its sole discretion, allow certain persons or entities who are developing and building within the Property, the right to display signs as approved by the Developer.

22. Fences and Walls. The composition, location or height of any fences or walls to be constructed on any Lot shall be subject to the approval of the Developer. The finished side of any such fence or wall approved or constructed shall face to the outside of the Lot, so as to be visible and viewed from the Property surrounding the Lot upon which such fence is constructed. No fence or wall shall be constructed from the front of such set back line, except at court yards as approved by the Developer will be permitted. Fences on the side lot lines shall not exceed six feet in height. Fences on the back Lot lines shall not exceed six feet in height. On corner Lots, no

fence or wall shall be constructed closer to the side street than the setback lines.

23. Lawns and Landscaping. Shrubbery, including hedges, shall not be placed so as to obstruct the vision of motorists. No gravel or blacktop or paved parking strips are to be allowed, except those leading to the garage. All lawns shall be fully sodded to the lot lines.

24. Window Air Conditioning Units. Unless prior approval of the Developer is obtained, no window air conditioning units shall be permitted.

25. Sidewalks. Sidewalks shall be so designed as to avoid the destruction of trees where possible and shall not be required to be straight, provided, however, the sidewalk shall be so designed as to take into account the sidewalks on adjacent properties so that the same will connect forming contiguous sidewalks. All sidewalk design and water meter locations must be approved by the Developer and Orange County or the City of Winter Garden. The cost of the sidewalk shall be paid by the Owner.

26. Antennas. No antennas shall be installed that extend beyond the highest point of the roof. A television antennae shall be permitted so long as said antennae is installed in the rear of the house and does not extend beyond the highest point of the roof.

27. Topsoil/Drainage. No sod or topsoil shall be removed from the Lot without permission from the Developer. No change in the elevation of the Lot shall be made without protecting adjoining lots or the Property from surface water drainage caused by the change.

28. Removal of Trees. In reviewing the building plans, the Developer shall take into account, the natural landscaping, such as trees, shrubs, palmettos and encourage the Owner to incorporate them into his landscaping plan. No trees of six inches in diameter or greater at one foot above natural grade can be cut or removed without approval of the Developer, which approval may be given when such removal is necessary for the construction of a living unit.

### III. AMENDMENT

1. Amendment by Developer. The Developer unilaterally reserves and shall have the sole right (i) to amend these covenants and restrictions for the purpose of curing any ambiguity in or any inconsistency between the provisions contained herein; (ii) to include in any Contract or Deed or other instrument hereinafter made, any additional covenants and restrictions applicable to the Property, which do not lower the standards of the covenants and restrictions herein contained; and (iii) to release any Lot or Living Unit from any part of the covenants and restrictions which have been violated, including, without limiting, the foregoing and violations of building restriction lines and provisions hereof relating thereto if the Developer, in its sole judgment, determines such violation to be minor or in substantial violation. In addition, Developer may unilaterally amend this Declaration as set forth in other paragraphs of this Declaration.

2. Amendment by Association. The Owner's of at least seventy-five percent (75%) of the Lots and Living Units, may change or amend any provision hereof, except as specifically set forth in this Declaration in whole or in part, by executing a written instrument, in recordable form, setting forth such amendment and having the same duly recorded in the Public Records of Orange County, Florida. A proposed amendment may be instituted by the Developer, or by petition signed by 15% of the then Owners of the living units. A written copy of the proposed

Amendment shall be furnished to each owner at least ninety days, but not more than 120 days prior to a designated meeting to discuss such particular amendment. Said notification shall contain the time and place of said meeting. The recorded amendment shall contain a recitation that sufficient notice was given as above set forth and said recitation shall be conclusive as to all parties and all parties of any nature whatsoever shall have full right to rely upon said recitation in such recorded Amendment. Notwithstanding anything contained herein to the contrary, so long as Developer owns ten percent (10%) or more of said Lots (including any Lots annexed), Developer shall have the right to amend and modify the restrictions, without approval of the balance of the Owners and Developers shall have the right to disallow any amendment to this Declaration.

3. Notwithstanding anything contained herein to the contrary, the Developer shall have the right to unilaterally in its sole discretion, amend this Declaration to comply with FHA and VA, FNMA, Freddie Mac and other regulations to permit the Developer or Owners to obtain the widest range of financing on the Property, Lots and Living Units.

#### DURATION

1. The covenants, restrictions and provisions of this Declaration shall run with and bind the land and shall inure to the benefit of the Owner's, the Developer and their respective legal representatives, heirs, successors and assigns, until amended, modified or until a period of twenty-five years from the date of the recordation of these covenants and restrictions, after which said covenants and restrictions shall be automatically extended for successive periods of ten years unless an instrument signed by seventy-five percent (75%) of the then Owners of the Lots has been recorded, agreeing to change said restrictions in whole or in part, or to terminate the same.

#### V. ENFORCEMENT

1. If an Owner or a person residing in a Living Unit on the Property, or any other person or persons, or any of their heirs, personal representatives, successors or assigns, shall violate, or attempt to violate any of the covenants or restrictions contained herein, it shall be lawful for the Developer, Homeowner's Association, or any Owner, either individually or collectively to prosecute any proceedings at law or in equity against the person or persons violating or attempting to violate any such covenant and either to prevent him or them from so doing or to recover damages or other sums for such violation period.

2. It is expressly understood and agreed that all costs, including reasonable attorney's fees, incurred by any moving party in any legal proceeding which results in the successful enforcement of any covenant or restriction contained herein, shall be borne in full by the Defendant in such proceedings, including attorney's fees and costs incurred on appeal of any lower court decision.

#### VI. REMEDIES FOR VIOLATIONS

1. For violation of a breach of any provisions herein, any person claiming by, through or under the Developer, Homeowner's Association or by virtue of any judicial proceedings, the Owner or an institutional first mortgagee, or any of them severally, shall have the right to proceed at law for damages or in equity to compel compliance of any of them or for such other relief as may be appropriate. In addition to the foregoing right, the Developer shall have the right whenever there shall have been built within the Property any structure which is in violation of this Agreement, to summarily abate, or remove the same at the expense of the Owner, provided, however, the Developer shall then make the necessary repairs and construction, necessary to insure that the Property and improvements where such violation occurred

shall be in the same condition as it was before said violation occurred and any such entry and abatement or removal shall not be deemed to be a trespass. The failure to promptly enforce any of the provisions of this Agreement shall not bar their subsequent enforcement.

2. The Developer shall have the sole and exclusive right and from time to time to transfer and assign to and to withdraw from, such persons, firm or corporation as it shall select, any and all rights, powers, privileges, authorities and reservations given to or reserved by the Developer herein. If at any time hereafter, there shall be no person, firm or corporation entitled to exercise the rights, powers, privileges, authorities and reservations given to or reserved by the Developer under the provisions hereof, the same shall be vested in and be exercised by a committee to be elected or appointed by the Owners of a majority of the Lots in the Property. Nothing herein contained, however, shall be construed as conferring any rights, powers, privileges, authorities or reservations in said committee except in the event as aforesaid.

#### VII. SEVERABILITY

1. Invalidation of any one of these covenants or restrictions or any part thereof by judgment or court order shall in no wise affect any of the other provisions which shall remain in full force and effect.

#### VIII. ADDITIONAL COVENANTS AND RESTRICTIONS

1. No Owner, without the prior or written approval of the Developer, may impose any additional covenants or restrictions on any part of the Property.

#### IX. COMMON AREA

1. The Plat recorded on the Property reflects certain areas which may be defined as Common Area, which area shall be those areas of the Property that are not dedicated to a governmental agency, are not platted as a lot, within the Property. These Common Areas will require maintenance by the Owners. It is the intent of the Developer to transfer the fee simple interest to a corporate Homeowner's Association which Homeowner's Association shall have as its members, owners of Lots and the Developer. Owners of Lots shall be subject to payment of assessments, which assessments shall be used for the maintenance and repair of the Common Areas and to defray the expenses of the cost of enforcement of these covenants and restrictions, in addition to the defraying of the costs of maintaining Lots which are not being maintained pursuant to these covenants and restrictions.

#### X. HOMEOWNER'S ASSOCIATION

1. The Developer is intending to form a non-profit corporation to act as the Owner of the Common Areas and to enforce these covenants and restrictions at such time as Developer assigns its rights to the enforcement of these covenants and restrictions to the Homeowner's Association.

A. Membership and Voting Rights: Every Owner shall be entitled and required to be a member of the Association. If title to a Lot is held by more than one person, each such person shall be members. An Owner of more than one Lot shall be entitled to one membership for each Lot owned by him. Each such membership shall be appurtenant to the Lot upon which it is based and shall be transferred automatically by conveyance of that Lot. No person or entity other than Owner or Developer may be a member of the Association, and membership in the Association may not be transferred except in connection with the transfer of title to a Lot; provided, however, the foregoing shall not be construed to prohibit the Assignment of Membership and voting

rights by an Owner who is a contract seller to his vendee in possession.

B. Voting: The Association shall have two classes of voting membership. Class A members shall be all Owners with the exception of Developer and shall be entitled to one vote for each Lot owned. When more than one person holds an interest to any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Lot. There shall be no split vote. Prior to the time of any meeting at which a vote is to be taken, each Co-Owner must register with the Secretary of the Association or the Developer in order to be entitled to vote at such meeting, unless such Co-Owner's have filed a general voting authority with the Secretary applicable to all votes until rescinded.

Class B members shall be the Developer, its successors or assigns and shall be entitled to 3 votes for each Lot owned. Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier; (i) when the total votes outstanding in Class A membership exceed the total votes outstanding in Class B membership, or; (ii) the 1st day of September, 1985, or if Developer desires to turn over control of the Association to the Owners, provided, however, unless Developer decides to transfer control of the Association to the Owners, said termination of control by Developer shall not occur as long as Developer has not completed the platting of a minimum of 176 Lots and has sold a minimum of ninety (90%) percent of those Lots.

#### XI. RIGHTS AND OBLIGATIONS OF THE ASSOCIATION

1. The Association shall be responsible for the maintenance and repair of the Common Areas. It shall also be responsible for assuring the maintenance of Lots and Living Units as is necessary in a manner which is compatible to the general appearance of the Property.

2. Services. The Association may obtain and pay for the services of any person or entity to manage its affairs or any part thereof, to the extent it deems advisable as well as such other personnel as the Association shall determine to be necessary and desirable for the proper operation of the Common Areas. The Association may obtain and pay for legal and accounting services necessary and desirable in connection with the operation of the Property or the enforcement of the covenants and restrictions.

#### XII. COVENANTS FOR ASSESSMENTS

1. Each Owner of any Lot by acceptance of a Deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association; (i) annual assessments or charges; and (ii) special assessments for requirements as set forth in the covenants and restrictions; such assessments to be established and collected as herein provided; and (iii) all excise taxes, if any, which may be imposed on all or a portion of the foregoing by law. All such assessments, together with interest and all costs and expenses of collection, including reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the Lot against which each assessment is made. Each such assessment, together with interest and all costs and expenses of such collection, including reasonable attorney's fees, shall also be the personal obligation of the person who is the owner of such property at the time the assessment fell due. The personal obligation for delinquent assessment shall not pass to an Owner's successor in title unless expressly assumed by them, however, the land shall still be subject to foreclosure for failure of a previous Owner to pay any obligation due under this Declaration. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the Owners; for the

improvement and maintenance of the Common Area and for payment of all taxes assessed against the Association if any, in respect to the Common Area or the income generated by the assessments or for the improvements or enforcement of the provisions of these covenants and restrictions. The annual assessment shall be no more than is reasonably required to maintain the Common Area and to pay the estimated cost of the operation of the Association. It is estimated that the initial Association fee shall be Fifty Dollars and that the fee will not increase by more than fifteen percent in any one year. In the event there are additional assessments required after the Developer transfers the Common Area to the Association, it shall require a seventy-five percent (75%) vote of the Owners to increase the assessment over the fifteen percent (15%). Up to the fifteen percent (15%) increase can be obtained by a vote of the Board of Directors of the Association. The Developer shall have total control of the Association and the assessments until such time as the Developer transfers the Common Area to the Association. Written notice of any meeting called for the purpose of taking any action authorized by the Association other than amendment of the covenants and restrictions shall be sent to all members not less than fifteen days and no more than thirty-five days in advance of the meeting. At the first such meeting called, the presence of members or proxies entitled to cast seventy-five percent (75%) of all of the votes shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be fifty percent (50%) of the total eligible vote. No such subsequent meeting shall be held more than thirty-five days following the proceeding meeting. All assessments shall be fixed at a uniform rate for all lots, however, assessments for the failure of an individual owner to meet the requirements of the covenants and restrictions shall not have to be uniform. The date for commencement of annual assessments for each lot shall begin at the closing of the sale of the lot, provided however the Developer shall not be required to pay assessments until the earlier of (i) sale of ninety-five percent (95%) of the lots to be developed on the Property and the land described on Exhibit A or (ii) September 1, 1998, or (iii) at the option of Developer provided further that said assessments as to the Developer shall only be on fully developed lots owned by Developer. Assessments may be collected on an annual or monthly basis as initially set forth by the Developer and then subsequently determined by the Association. Developer shall have the right to annex additional property to the Association and make said property subject to the covenants and restrictions and assessments set forth herein without approval of members of the Association.

### XIII. LIENS FOR ASSESSMENTS

1. All sums assessed to any Lot pursuant to these covenants and restrictions, together with interest and all costs and expenses of collection, including reasonable attorney's fees, shall be secured by a lien on such Lot in favor of the Association, or, if prior to the transfer of the Common Area, to the Association or to the Developer. Such lien shall be superior to all other liens and encumbrances on such Lot except only for liens of general and special taxes and a lien for all sums unpaid on a first mortgage or any Purchase Money Mortgage duly recorded, including all unpaid obligatory advances to be made pursuant to such mortgage and all amounts advanced pursuant to such mortgage and secured by the lien thereof in accordance with the terms of such instrument. Except for said liens of general and special taxes, liens for all sums secured by a first mortgage and Purchase Money Mortgages as more particularly defined above, all other lienors acquiring liens on any Lot after the recordation of these covenants and restrictions in the Public Records of Orange County, Florida shall be deemed to consent that such liens shall be inferior to liens for assessments as provided herein, whether or not such consent is specifically set forth in the instruments creating such liens. The recordation of these covenants and restrictions in the Public Records of Orange County, Florida

shall constitute constructive notice to all subsequent purchasers and creditors of either of the existence of the lien hereby created in favor of the Association and the priority thereof. In the event any assessment is not paid within thirty days after the due date, it shall bear interest from the due date at the rate of fifteen percent per annum. The Association or Developer, if prior to the transfer of the Common Area to the Association, may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the property or both. No Owner may waive or otherwise escape liability for the assessments provided for herein. A suit to recover a money judgment for unpaid assessments hereunder shall be maintainable without foreclosing or waiving the lien securing the same. The lien for sums assessed pursuant to these covenants and restrictions may be enforced by judicial foreclosure by the Association, or the Developer in the event the Common Area has not been transferred to the Association in the same manner in which Mortgages on real Property may be foreclosed in Florida. In any such foreclosure, the Owner shall be required to pay all costs and expenses of foreclosure including reasonable attorney's fees. All such costs and expenses shall be secured by the lien being foreclosed. The Owner shall also be required to pay to the Association, or Developer as the case may be, any assessments against the lot which may become due during the period of foreclosure, and the same shall be secured by the lien foreclosed and accounted for as of the date of the Owner's Title as divested by foreclosure. The Association or the Developer if applicable shall have the right and power to bid at the foreclosure or any other legal sale to acquire the lot foreclosed, and thereafter to hold, convey, lease, rent, encumber, use and otherwise deal with the same as the Owner thereof, for the purposes of resale only. In the event the foreclosure sale results in a deficiency, the Court ordering the same may, in its discretion, enter a personal judgment against the Owner thereof for such deficiency, in the same manner as is provided for foreclosure of mortgages in the State of Florida. By acceptance of a deed thereto the Owner of each lot shall be deemed to acknowledge conclusively that the obligations evidenced by the assessment provided for in these covenants and restrictions are for improving and maintenance of any homestead maintained by such Owner on such Owner's lot. The lien of the assessment shall be subordinate to the lien of any first mortgage and mortgages and to any mortgages to Developer. The sale or transfer of any lot shall not affect the assessment lien, however, the sale or transfer of any lot pursuant to any foreclosure of any such first mortgage or mortgage held by the Developer or any proceedings in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such lot from liability for assessments thereafter becoming due or for the lien thereof.

#### XIIII. TRANSFER FEE

1. Any Owner shall receive from the Association, or Developer, if appropriate, upon demand and payment of a reasonable transfer fee set by the Association or Developer (the initial fee being \$25.00) a certificate in recordable form certifying the status of Assessments. Said fee shall further entitle a successor Owner to proper registration and membership upon receipt of a recorded deed. No change of registration shall be accomplished on the records of the Association until said fee has been fully paid.

#### XV. EXTERIOR MAINTENANCE

1. Each Owner shall have the obligation to provide proper exterior maintenance for each Living Unit and also maintenance upon any vacant Lot. In the event the Owner fails to perform appropriate maintenance which would be in conformity to the maintenance of other Lots and Living Units within the Property, the Association or Developer shall determine that the Lot or Living Unit is in need of repair or maintenance and is

distracting from the overall appearance of the Property. Prior to the commencement of any work on the Lot or Living Unit, the Association or Developer must furnish ten (10) days written notice to the Owner at the last address listed in the Association Record for said Owner, notifying the Owner that unless such certain specified repairs or maintenance are made within a ten day period, the Association shall make the necessary repairs and charge the same to Owner. Upon the failure of the Owner to act within said period of time, the Association shall have the right to enter in or upon such Lot, or to hire personnel to do so to make such necessary repairs or maintenance as is specified in the above written notice. In this connection, the Association shall have the right to paint, repair, replace and care for roofs, gutters, downspouts, exterior building services, trees, shrubs, grass, walk and other exterior improvements. The cost of such exterior maintenance shall be assessed against the Owner upon which such maintenance is done and shall be considered an assessment which required to be paid the first day of the month following the rendering of such services. Such assessment shall be a lien on the Lot pursuant to the aforementioned Assessment section.

XVI. NOTICES

1. Any Notices required to be sent to any member or Owner under the provisions of these covenants and restrictions shall be deemed to have been properly sent when mailed, postpaid, to the last known address of the person who appears as a member or Owner on the records of the Association at the time of such mailing.

IN WITNESS WHEREOF, the undersigned Developer has caused these presence to be executed as of the 21 day of August, 1985.

Signed, sealed and delivered in the presence of:

TIMBERCREEK, LTD.  
A Florida Limited Partnership  
BY: FIRST SOUTHERN EQUITY INC.  
General Partner

[Signature]  
-----  
-----

BY: [Signature]  
-----  
TITLE: [Signature]  
-----

STATE OF FLORIDA  
COUNTY OF Orange

I HEREBY CERTIFY that on this 21<sup>st</sup> day of August, 1985, before me personally appeared Ben Schwartz, as Vice President of FIRST SOUTHERN EQUITY, INC., and who executed the foregoing Declaration of Covenants and Notice of Restrictions on Real Estate, and acknowledged before me that he executed the same.

WITNESS my hand and official seal in the County and State last aforesaid the day and year last aforesaid.

[Signature]  
NOTARY PUBLIC Notary Public, State of Florida  
MY COMMISSION My Commission Expires July 27, 1987  
Bonded by The Ohio Casualty Insurance Co.  
STATE OF FLORIDA

Lots 1, 2, 3, 4 and 5 of the subdivision of L. F. Tilden's Land in Sections 15, 16, 21 and 22, Township 22 South, Range 27 East, according to the plat thereof, recorded in Plat Book "B", Page 131, Public Records of Orange County, Florida; and a parcel of lake bottom land beginning 1,448.18 feet North of the NE corner of the SE 1/4 OF SE 1/4, Section 15, Township 22 South, Range 27 East, run thence North 44 degrees West 165 feet, South 88 degree West 388 feet, thence Easterly 495 feet, to intersect the North projection of the East line of Lot 1 of said Subdivision, thence South to the Point of Beginning. (Less road Right-of Way over South 30 feet of Lots 3, 4 and 5).

LESS King's Bay, according to the Plat thereof recorded in Plat Book 15, Page 112 of the Public Records of Orange County, Florida.

and

LESS Timbercreek Unit I, as recorded in Plat Book 10, Page 82, Public Records of Orange County, Florida.

PREPARED BY: Ronald Schwartz  
Vice President  
Timbercreek, Ltd  
826 Irma Avenue  
Orlando, Florida

RECORDED & RECORD VERIFIED  
*Thomas H. Lockie*  
County Comptroller, Orange Co., Fla.